

**PROCEEDINGS OF THE BROWN COUNTY  
CRIMINAL JUSTICE COORDINATING BOARD**

Pursuant to Section 19.84 Wisconsin Statutes, a regular meeting of the Brown County **Criminal Justice Coordinating Board** was held virtually on Tuesday, December 8, 2020 in Green Bay, Wisconsin.

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<b>Members Present:</b>	Judge Tammy Jo Hock Michele Andresen for DA David Lasee Jail Captain Heidi Michel Criminal Justice Mgr. Mark Vanden Hoogen Citizen Rep. Christopher Zahn Public Safety Cmte. Rep. Keith Deneys Public Defender Rep. Tara Teesch	Health & Human Svc. Director Erik Pritzl Citizen Rep. Robert Srenaski Citizen Rep. Tim Mc Nulty Probation and Parole Rep. Aaron Sabel Clerk of Courts John Vander Leest County Executive Troy Streckenbach Public Defender Attorney Manager Jeff Cano
<b>Others Present:</b>	Family Services Rep. Angela Stueck Corporation Counsel Dave Hemery Student Intern Jaelyn Walker Brown County Board Chair Pat Buckley Other interested parties	

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**1. Call Meeting to Order.**

The meeting was called to order by Chair Tammy Jo Hock at 12:06 pm

**2. Approve/modify Agenda.**

**Motion made by Pat Buckley, seconded by Mark Vanden Hoogen to approve. Vote taken. MOTION CARRIED UNANIMOUSLY**

**3. Approve/modify minutes of October 13, 2020.**

The attendance portion of the October 13, 2020 minutes was modified to move County Executive Troy Streckenbach and Green Bay Chief of Police Andrew Smith from "others presents" to "members present".

**Motion made by Pat Buckley, seconded by Troy Streckenbach to approve as modified. Vote taken. MOTION CARRIED UNANIMOUSLY**

**4. Jail population numbers (Sheriff).**

Jail Captain Heidi Michel informed as of this afternoon the jail is operating at 84% capacity. There are currently 106 quarantined inmates housed at the work release center and 114 out on EMP. There are not currently any inmates shipped out.

**5. Efficiency Report (DA Lasee).**

DA Office Manager Michele Andresen reported to the Board, however, due to technical issues, her report was very difficult to hear. Judge Hock said the gist seemed to be that the only real issue is the appointment of public defender attorneys and that matter is on the agenda for today's meeting. Judge Hock recalled at the last meeting Lasee informed that some of the inefficiencies in the criminal justice system have been addressed due to COVID and he feels this is a great place to continue to address issues going forward due to the membership of this Board.

*Although shown in the proper format here, Item 7 was taken at this time.*

**6. Review of Bylaws regarding Secretary Position.**

Judge Hock recalled from the last meeting this really came down to who is this Board going to get to take the minutes of these meetings. She and Lasee were going to reach out to the County Clerk to see if Clerk staff would still be willing to take the minutes, but with a new Clerk coming on in January, they felt it would be more appropriate to wait until then to approach the Clerk to see what his ability to continue offering a staff member to take these minutes would be and therefore she would like to table this until the next meeting.

**7. Appointment of SPD defense attorneys to cases in a timely manner.**

Public Defender Attorney Manager Jeff Cano reported there are 60 more felony files this year than there were last year at this time and 80 less misdemeanor cases this year than last year at this time. Cano said the legislator gave the state more attorneys and gave the DA's office the ability to give raises, but the same did not happen with the Public Defender's Office. There is a lack of private attorneys that will take cases in Brown County. Cano continued that in his office specifically they have less felony attorneys than they did a year ago. At this time there about 200 cases in the Public Defender's Office that need to be appointed and that is close to what the number was when the rate for Public Defenders went from \$40 to \$70 an hour.

Cano continued that in the 1990s, the Public Defender's Office used to appoint two to three attorneys and the fourth would have to be at the discretion of the first assistant. At some point the agency in Madison interpreted *Gideon* that an infinite number of attorneys need to be assigned to indigent clients and over the last decade there were many clients that have had five, six, seven or more attorneys. Madison is now taking the position that that is not really the intent of *Gideon* and taxpayer expenses and if a client fires an attorney, it is at the discretion of the Court to order another Public Defender and after that, the client is on their own. Judge Hock asked if that is a policy determination statewide and Cano responded that it is statewide, but there is still some discretion. Regionally they will still allow for hearings and discretionary orders from the Court and the Public Defender's Office. In all likelihood, most cases will be one and done. Judge Hock feels this will address some of the issues and noted she sees cases where one attorney is let off and then a new attorney is very difficult to find. She added that in the case of a conflict of interest, many times the conflict is very broad if there are a lot of defendants in a case.

Judge Hock asked what can be done in a routine case to find an attorney faster for defendants. Cano responded that his office sends private attorneys a list of cases they can choose to pick up. If a case takes awhile to get appointed, they have staff contact attorneys by phone. They go to local attorneys first, and if they do not find anyone, they go one county over and then they will go statewide if they have to, but that really is not a solution for the entire number of cases that are waiting for attorneys.

Cano continued that another issue is the pay. The pay is \$70 an hour, which is better than the \$40 they used to pay, but for a private attorney, \$70 is the breakeven point so they are not making any money by taking cases, however, that is a state problem and nothing we can solve here. Cano added that Milwaukee does not have these problems; they are able to get rid of all their cases at \$70 an hour. What happens is they get young attorneys just starting out and then as those attorneys build up their clientele, they take their name off the Public Defender list and only take private pay cases.

Marinette County handles this by asking their attorneys to take one public defender case for every court appointed case they take. Cano noted their county appointments are \$130 an hour, so if they take a \$130 case from the court and then they take a \$70 public defender case, they are averaging \$100 an hour. Judge Hock noted that Brown County puts a cap on how many hours can be billed on court appointed cases and she is not aware of other counties doing this. Sometimes that makes it difficult to get attorneys to take those cases. Cano commented that at one point there was a large local bar that would take cases, but now the same local bar will drive to a neighboring county to take cases. Judge Hock said she has met with some

local attorneys about this and she was told the exact same thing. Attorneys have told her that they are not even paid travel time to go to the jail to meet with clients.

Judge Hock asked how long the list of attorneys from the private bar that will take public defender cases is. Cano responded that in the 1990s almost every criminal defense attorney would take cases, but at this time, there is a pretty big list theoretically, but in reality, there are only a certain number of attorneys on the list that will take cases. Cano does not know offhand what that number is, but noted there are attorneys on the list who have not taken a case in a number of years. Judge Hock said she keeps a list of attorneys who may take public defender cases, but it is pretty short.

Judge Hock continued by asking Cano if he has any suggestions as to how to make this situation more palatable or to reduce the list of 200 cases that are waiting for appointments. Cano responded that clerical staff is making phone calls, but if the court knows a name that should be added to the list, he would welcome that information. Judge Hock does not have a good list, but for the benefit of this Board, she informed 200 people needing attorneys is pretty significant, considering the fact that some of those may have been in custody for months without an attorney. This raises significant issues that could be brought up in motions. Further, it is not fundamentally fair to have someone sitting in custody for a significant period of time and not have an attorney because it means their case is delayed and nothing is happening, yet they are in custody and that is a violation of their rights.

Clerk of Courts John Vander Leest asked if the county could contract with attorneys on a per-case basis to get some of the backlog taken care of. Judge Hock responded that the problem is that the state pays for the public defenders, and if this was done through the county, it would be a county budget item. Before the pay was increased, the judges brought in representatives from the Public Defender's Office in Madison to address if the county court-appointed, if the Public Defender's Office would cover the first \$40 an hour if the county paid the difference and they would not agree to that. If the county was to contract as Vander Leest is suggesting, which Judge Hock feels has a lot of validity, it would become a county budget item. Vander Leest felt this could be a short-term solution to get the backlog taken care of, and added that consideration also has to be given to the cost of defendants sitting in jail for months at a time waiting for an appointment. Judge Hock said the reality is that most of the people who are in custody for a long period of time would be serving a longer sentence either at the Brown County Jail or in prison, but she does not know that in the end that would change a lot with the cost benefit analysis of evaluating how much time they are spending in custody. Judge Hock noted that there is also the chance that someone who has sat in custody for a long time could end up being found not guilty and that is a real problem.

County Executive Troy Streckenbach asked what the average length of stay in the jail is before someone has their day in court. He noted it costs roughly \$55 a day to have someone in jail and he would like to know what the statistics are. Judge Hock noted that not everyone waiting to have a public defender appointed is in jail. She guessed that most defendants are not in custody, because priority is given to those that are in custody first. Cano added that in the 1990s and the early 2000s they had every case appointed out within a week, but that is no longer the case.

Judge Hock asked Cano why he felt what was happening in the 1990s and 2000s is not happening now; whether it was pay or other factors. Cano replied that there used to be more attorneys on the list and the pay raise from \$40 to \$70 only brought it up to a break even point. They went from below market to just breaking even and he feels this should be raised.

Public Defender Tara Teesh agreed with Cano and said that what was going on in the 1990s compared to now may be attributed to an experience gap. When she started with the office in 2003, there were a lot of attorneys who were on their way to being lifers at the Public Defender's Office, but that no longer seems to be the case. Cano agreed that in the past the turnover was very low, but now out of 13 attorneys, 10 have been with the office less than five years. Judge Hock said that impacts the ability to handle a high number

of high-level felonies. She asked if pay was the issue in keeping staff attorneys and both Cano and Teesh feel it is. As far as attracting the private bar, Cano said one issue is the pay and the other issue he sees is that there appear to be less attorneys in Green Bay that do criminal defense work than there were in the past. Many private bar attorneys in Brown County start out taking public defender cases, but once they build up their own clientele, they do not need the public defender cases anymore. Occasionally they may take a case here or there if they are having a slow month, but the money they are paid for public defender cases is less they can make with private pay clients. Teesh also mentioned that the caps on court-appointed bill time may be affecting willingness to take cases, although she does not have anything anecdotal on that. Judge Hock referred to what Marinette County is doing as referenced earlier where attorneys who take court appointed cases are then required to take a public defender appointment. She is not against trying to implement this, but she would like to see statistical data as to how many court appointed cases we are doing and what that may do to increase the number of appointments made by the Public Defender's Office.

Judge Hock noted that court appointed attorneys frequently ask for additional hours. She said in the past there may have been a police report to review and that is it, but now, there is dash cam, videos, etc. and the attorneys cannot get through all of the discovery in the time allotted so they do not want to take those cases and she feels this likely applies to the public defender cases as well. Vander Leest said he frequently sees attorneys asking for more hours and perhaps this is something that can be discussed among the judges. Teesh agreed that electronic discovery requires many more hours to review a case. Judge Hock said if a case is going to take double the time, an attorney can only take half as many cases as they may have been able to take before.

Buckley asked how the DA's office will be affected once the problem with the backlog in the Public Defender's Office is solved. Judge Hock responded that the backlog in the DA's office is tremendous because they do not have enough people. If the DA's office ever gets up to speed with enough people, we will have to plan on doubling what the Public Defender's Office is doing as well. At this time, Judge Hock feels it's the Public Defender's Office not being able to keep up with what is being issued. If the DA issues more cases, the problems in the Public Defender's Office are going to increase. Buckley asked if the number of cases waiting to be issued in the Public Defender's Office allows the DA's office to get work done. Cano said both offices slow down and Teesh agreed that it is a symbiotic relationship between the DA's Office, the Courts and the Public Defender's Office. Judge Hock added that there are a lot of cases that get called in court over and over because there is no attorney or they need a new attorney and this results in a lot of wasted court time which also means a lot of wasted DA time. There is a lot of inefficiency that affects the DA's Office, the Public Defender's Office and the Courts.

Judge Hock feels today's conversation has been enlightening and although there is not anything this Board can do today, there may be a few things that can be tried that may have a little impact such as how many attorneys can be appointed to a defendant. She has been less and less comfortable allowing attorneys to withdraw because she understands it is going to be difficult to find another attorney. She encourages the attorney and the defendant to have a conversation before an attorney withdraws and she estimated that this is successful more than 50% of the time.

Public Safety Committee Chair Keith Deneys would like to look at some data regarding these issues. One thing he would like to know is if Brown County is the only county having these problems because if we are, we should be looking at what is being done in other counties that do not have these problems. He also referenced the comments that Brown County pays their attorneys less than surrounding counties and he would like to know what the other counties are paying. Cano responded that Marinette County pays \$130 an hour, Shawano is \$0 because they do not do court appointed attorneys - they let the person sit in jail until they come up with a retainer and then they start appointing at that point. Outagamie pays \$100. Teesh added that Door is also \$100 and Cano added that the other counties do not have caps either.

Deneys continued that if we are going to look at this budgetarily and we can solve it through some type of budget change, he wants to know exactly what the impact is. Would it be a change in the rate, or would it be a change in the hours? Deneys would like to know what would appropriate caps would be given the digital data that needs to be reviewed and everything else that has changed. He would like to know what it would take to get attorneys to start taking cases. He understands this will have an impact on the DA's office and the courts, but until we know what the impact is going to be, we cannot even make an educated guess if it is a budgetary issue. From what Deneys has heard in this meeting, it seems to be the cost to run the office and the attorneys do not want to just get by, they want to make a profit and he understands that. He feels this comes down to what is reasonable. He would appreciate receiving some of this information so more research can be done.

Cano said it is his understanding this is a statewide problem, except for Milwaukee and Dane counties. Some of the smaller counties like Langlade County have almost zero private bar to take cases. Cano said perhaps there are less people going to law school because they do not want to incur large debt to make \$70 an hour. Judge Hock asked about the backlog in Outagamie County. Cano responded that the backlog in Outagamie County is smaller than the backlog in Brown County and noted that they have a private bar, do not have caps on appointments and they pay \$100 per hour. Teesh said there is little backlog in Door County as well and it is mostly related to conflict cases. Cano added that in Door County there are about three or four attorneys that take cases and they are typically the same attorneys that take cases in Kewaunee County. Door County does not seem to have as many people in custody, so the pressure to get a lawyer is less.

Buckley questioned how relative it is to compare Brown County to the smaller counties. He feels we would be better served comparing Brown County to larger, more similar counties. Judge Hock added that Brown County is often compared to Waukesha County rather than the smaller counties around us. Corporation Counsel Dave Hemery commented that this is a state funded cost and moving forward he feels the county needs to contact the state. Judge Hock said the county has made inquiries in this regard before to try to get through the analysis. Marinette decided on their own to handle this situation themselves by increasing the rate for court appointed attorneys and they sandwiched that with the situation where the attorneys have to take a public defender case as well. This gave them some leverage to handle the issue and Judge Hock said she will look to see if there is any desire to do something similar in Brown County. She understands the difference in the issues and said that even when they tried to supplement the pay, they could not get the Public Defender's Office to get on board with that.

Streckenbach said it would be extremely helpful to him to be provided with data as to what the Public Defender's Office feels would be needed from a budgetary standpoint. Secondly, the bigger question is how much this is truly a state issue that is happening everywhere except Dane and Milwaukee Counties. The biennial budget package will be put together soon and debated over the next six months. Streckenbach feels we should be tackling this through WCA, Badger State Association and Public Defender groups stating the remedy of a \$30 increase in the last budget is not cutting it and there is a cost across the board that is being impacted. Streckenbach continued that one of the things that Evers has made very clear is that he does not want to build any more jails or prisons and if he is going to resolve some of these criminal justice issues, one of the things he needs to do is fund the justice system adequately enough to address the issues. He feels there are a lot of arguments we can bring forward and the clock is ticking in terms of getting in front of the budget people with the Governor's office. Streckenbach would love to have the data and noted that he sits on the WCA Board and he would like to bring this up at an upcoming meeting as an item for a statewide approach. Judge Hock feels that would be really useful because if Dane and Milwaukee counties are not having similar problems, her opinion is that this is not going to get the attention that is needed statewide. She does not know who should raise the issue, but she does feel it needs to be dealt with and she hopes the Public Defender's Office will be approaching this at a state level also.

Cano said the state had a problem increasing the rate from \$40 to \$70 an hour and noted that he started in the Public Defender's Office in 1993 and the \$40 an hour rate predated that. He feels for some reason people do not feel the criminal defense bar should make money and that kind of thought has to change.

Judge Hock indicated some of the data requested today by Deneys and Streckenbach would be useful prior to the next meeting and asked how the information can be disseminated so it can be addressed in upcoming meetings. The information requested includes statistical data as to if this is a Brown County issue or if it is happening elsewhere and what kind of budget dollars would actually help this problem. Streckenbach said he has not looked through the WCA legislative priorities, but what he needs to understand is if Brown County is going to contemplate adding an additional \$30 to the hourly rate, what that will look like from an annualized perspective. He is very interested in addressing this issue, but noted the county is also debating bodycams right now and the cost of that is going to very large. Streckenbach continued that the state does a lot of unfunded mandates and we need to make our case on this. With the Evers administration there may be more interest in addressing and funding this if we can tie it to people who are in jail waiting for their cases to be heard. If this would address any of the criminal justice reform that Evers is looking to accomplish, that would be to our benefit as well.

Cano added that he has heard in the last year that some of the older attorneys are reluctant to take cases because they do not want to go to the jail because of COVID. Michel noted that hopefully by the end of December or early January the jail should be up and running with the video visitation which will be better than Zoom and will allow attorneys to have conferences with their clients from anywhere. This will hopefully help encourage attorneys because they will not have to travel. Cano responded that he feels that will help with attorneys who take cases from out of the area.

*Following this Item, the Board went back to Item 6.*

**8. Future Agenda Items, if any.**

Streckenbach referenced the report submitted by Mark Vanden Hoogen and asked that that report be put on the next agenda as a discussion item.

**9. Other such matters as authorized by law.**

The next meeting date was discussed and March 2, 2021 at 12:00 pm was selected and the meeting will be held via Zoom.

**10. Adjourn.**

**Motion made by Pat Buckley, seconded by Mark Vanden Hoogen to adjourn at 1:01 pm. Vote taken.  
MOTION CARRIED UNANIMOUSLY**

Respectfully submitted,

Therese Giannunzio  
Recording Secretary